

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jesse Spieler-Jones	Team: Team # 5	CCRB Case #: 201000719	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 01/16/2010 4:45 PM	Location of Incident: § 87(2)(b)	Precinct: 69	18 Mo. SOL 7/16/2011	EO SOL 7/16/2011	
Date/Time CV Reported Tue, 01/19/2010 1:53 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 01/19/2010 1:53 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM David Barker	13845	926545	069 PCT
2. SGT Eric Delman	01832	922228	069 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Thomas Franklin	05207	924557	069 DET

Officer(s)	Allegation	Investigator Recommendation
A.SGT Eric Delman	Abuse: Sgt. Eric Delman supervised the stop of § 87(2)(b)	§ 87(2)(b)
B.POM David Barker	Force: PO David Barker used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM David Barker	Force: PO David Barker used a chokehold against § 87(2)(b)	§ 87(2)(b)
D.SGT Eric Delman	Abuse: Sgt. Eric Delman threatened § 87(2)(b) with the use of force.	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via telephone on January 19, 2010 (encl. 13A-B). On January 16, 2010, at approximately 4:45 p.m., at § 87(2)(b) in Brooklyn, § 87(2)(b) was stopped by PO David Barker under the supervision of Sgt. Eric Delman. The following allegations resulted:

- **Allegation A – Abuse of Authority:** Sgt. Eric Delman supervised the stop of § 87(2)(b) § 87(2)(g)
- **Allegation B – Force:** PO David Barker used physical force against § 87(2)(b)
- **Allegation C – Force:** PO David Barker used a chokehold against § 87(2)(b) § 87(2)(g)
- **Allegation D – Abuse of Authority:** Sgt. Eric Delman threatened § 87(2)(b) with the use of force. § 87(2)(g)

§ 87(2)(g)

Results of Investigation

Civilian Statements

Complainant: § 87(2)(b)

- § 87(2)(b) is a black female.
- § 87(2)(b) filed this complaint on behalf of § 87(2)(b). She did not witness the incident and made only hearsay statements in regards.

Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black male who is 6'1" tall, weighs 160 lbs and has black hair and brown eyes. At the time of the incident, he was employed as § 87(2)(b)

Testimony

§ 87(2)(b) made statements pertaining to this investigation in filing a walk-in complaint against a civilian at the 67th Precinct stationhouse on November 3, 2009 (encl. 7A-C), to medical personnel at § 87(2)(b) on January 17, 18 and 19, 2010 (encl. 8A-F), to Sgt. Genevieve Isom on January 17, 2010 (encl. 9A), in a sworn statement at the CCRB on § 87(2)(b) (encl. 11A-F), during a 50-H hearing that was held on April 28, 2010 (encl. 12A-12FF) at the offices of § 87(2)(b), which is the firm representing the City of New York in § 87(2)(b)'s civil suit, and over the telephone to the undersigned on August 24, 2010 (encl. 12GG). His testimony is summarized below, and all significant inconsistencies are noted.

On January 16, 2010, at approximately 4:45 p.m., § 87(2)(b) entered the yard of his residence at § 87(2)(b) in Brooklyn and proceeded across the front lawn to the outer door of his building's vestibule. At the time, § 87(2)(b) who was returning from a store, was holding a grocery bag in his right hand and his § 87(2)(b)-old son with his left arm. § 87(2)(b) stepped into the vestibule and began to open the door that connects the vestibule to the inside of the building. Before he had a chance to step past the threshold of this inner doorway, he felt someone grab his collar from behind and slam him against the inner door of the vestibule, which is made of iron. His head collided with the door approximately four inches above his eyebrows on the left side of his forehead. His head was the only part of his body that hit the door. He had not been grabbed on any other part of his body before this time. He had not seen any of the officers involved in the incident before he was grabbed.

At the time of his CCRB interview, the next event that he recalled was finding himself on the floor of the vestibule. He could hear his son crying but did not know where he was and assumed he had been dropped. A black male officer in plainclothes, identified by the CCRB as PO David Barker, had his knee on § 87(2)(b)'s chest and both his hands around § 87(2)(b)'s jugular area. PO Barker choked § 87(2)(b) while repeatedly telling him that he "fit the description." § 87(2)(b) who was having difficulty breathing, began screaming for his sister, § 87(2)(b) to come downstairs and assist him. § 87(2)(b) appeared on the staircase shortly thereafter.

§ 87(2)(b) asked the officers who they were and to show identification. PO Barker identified himself as "Officer Barker." § 87(2)(b) could not recall if PO Barker produced identification.) PO Barker continued to choke § 87(2)(b) at this time. § 87(2)(b) then noticed that his brother, § 87(2)(b) was standing on the stairs. While maintaining his grip on § 87(2)(b)'s neck, PO Barker lifted § 87(2)(b) by his neck until he was in a standing position. PO Barker then grabbed the chest area of § 87(2)(b)'s shirt with both hands and repeatedly pushed § 87(2)(b) against the vestibule wall approximately three or four times. These pushes caused § 87(2)(b)'s back and head to strike the wall. § 87(2)(b) told PO Barker that he did not have a right to be in his house. A white officer in plainclothes who was standing outside the vestibule, identified by the CCRB as Sgt. Eric Delman, said to PO Barker, "Bring him outside! Let me put a cap in his ass!" § 87(2)(a) Gen.Mun. §50-1(c) PO Barker, who had been holding § 87(2)(b) against the wall, released him and exited the vestibule. § 87(2)(b) began to feel dizzy but did not lose consciousness. He initially stated that he fell to the ground but later stated that he could not recall whether or not this happened. PO Barker stated, "You got this one. I made a mistake." § 87(2)(b) then helped § 87(2)(b) upstairs and the officers left the scene. At some point during the incident, § 87(2)(b) noticed a contract laborer, identified by the CCRB as § 87(2)(b) who sometimes performs maintenance work on his house standing at the top of the stairs that lead to the second floor; however, he could not recall what was happening when he noticed § 87(2)(b)

The next day, § 87(2)(b) began feeling weak and noticed a bump on his forehead. He consequently went to § 87(2)(b) from which he was transferred to § 87(2)(b) where a cyst was surgically removed from his brain. Since the incident, § 87(2)(b) has suffered headaches, diminished coordination, back pains, short term memory problems and insomnia. § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

During his interview, § 87(2)(b) stated that, due to his memory problems, he has difficulty recalling the incident. § 87(2)(b) testified during his interview that he could not recall whether or not the officers had a vehicle, that he did not know that PO Barker and Sgt. Delman were police officers at the time of the incident, that he did not discover that they were police officers until the following day

and that he could not recall how he found this out. However, when § 87(2)(b) was visited by Sgt. Isom in the hospital on January 17, 2010, he stated that the officers had badges around their necks and were driving a black jeep.

UF-61 # § 87(2)(b)

On November 3, 2009, § 87(2)(b) went to the 67th Precinct stationhouse to report that on October 22, 2009, an unapprehended perpetrator struck him in the head and face with a shovel. He sustained cuts to the top of his head and lips as a result.

Statements in Medical Records

On § 87(2)(b), § 87(2)(b) told medical personnel that on January 16, 2010, “the police” pushed him into a metal door, which caused his head to strike it. Although § 87(2)(b) initially denied losing consciousness, he later stated that, during the incident, he “passed out for a few seconds.” He stated that, when he awoke, an officer asked his name and stated that he had the wrong person before leaving. On § 87(2)(b), § 87(2)(b) reported experiencing a “drop attack” – i.e., a sudden loss of strength in the legs, often resulting in a fall and known to be a sign of blockage in arteries in the back of the brain – approximately two months prior to the incident.

Attempts to Contact Civilians

§ 87(2)(b) and § 87(2)(b) did not cooperate with the investigation’s attempts to obtain statements from them. § 87(2)(b) did not respond to the investigation’s attempts to contact him.

NYPD Statements:

Subject Officer: PO DAVID BARKER

- PO Barker is a § 87(2)(b)-old black male.
- On the date of the incident, PO Barker worked in plainclothes as an anti-crime officer in an unmarked vehicle with Sgt. Eric Delman from 9:30 a.m. to 6:05 p.m.

Memo Book (encl. 15A-B)

At 5:00 p.m., a male was stopped at § 87(2)(b). At 5:05 p.m., a report was prepared for a black male who refused to identify himself. The SPRINT # is 10684.

UF-250 # § 87(2)(b) (encl. 16A)

This stop and frisk report was prepared by PO Barker in regards to the incident. It indicates that, in the course of investigating an open complaint of a robbery (UF-61 number unspecified), PO Barker placed his hands on a black male in order to stop this individual, who refused to identify himself. PO Barker’s reasons for conducting the stop were that the stopped individual fit a description and provided evasive, false or inconsistent responses to officers’ questions. Sgt. Delman reviewed this UF-250.

Testimony (encl. 17A-C)

PO Barker was interviewed at the CCRB on September 20, 2010. On either January 15, 2010 or the morning of January 16, 2010, PO Barker was approached by Detective Franklin of the 69 Precinct detective squad, who asked PO Barker to bring a robbery suspect – identified by PO Barker as § 87(2)(b) – in for questioning. Detective Franklin stated that this suspect was wanted for larceny of a mobile phone and provided the suspect’s address – § 87(2)(b) in Brooklyn – and physical description: black male, slim to medium build. Detective Franklin stated that the physical description had been provided by the mother of the larceny victim. Detective Franklin did not specifically state that an I-

card had been generated in regards.

On January 16, 2010, at approximately 5:00pm, PO Barker was on patrol with Sgt. Delman in the general vicinity of § 87(2)(b) in Brooklyn when he relayed Detective Franklin's request to Sgt. Delman, along with the information that Detective Franklin had provided in regards. Sgt. Delman and PO Barker parked their vehicle across the street from § 87(2)(b) with the intention of waiting for an individual fitting the larceny suspect's physical description to approach the building, which PO Barker described as a two- or three-family house. The officers had been parked outside for less than an hour when they saw § 87(2)(b) approaching § 87(2)(b). PO Barker observed that § 87(2)(b) fit the physical description that had been provided by Detective Franklin. During his interview, PO Barker emphatically denied that § 87(2)(b) was carrying an infant at the time and insisted that he would not have attempted to approach § 87(2)(b) if he had been carrying an infant.

When PO Barker observed § 87(2)(b) begin to enter the front yard of § 87(2)(b), through the front gate, he and Sgt. Delman exited their vehicle and began to approach the building. Sgt. Delman stopped at the front gate, where he remained for the duration of the incident. PO Barker followed § 87(2)(b) into his yard and began to approach him from behind. As § 87(2)(b) began to enter the outer door of the vestibule, PO Barker took out his shield, identified himself as a police officer, ordered § 87(2)(b) to stop and asked § 87(2)(b) to provide his name. § 87(2)(b) turned around and appeared to be startled.

PO Barker reached out and lightly touched § 87(2)(b)'s arm just slightly above the elbow. This was the only physical contact that either officer made with any civilian throughout the duration of the incident. § 87(2)(b) pulled his body away slightly. As § 87(2)(b) backed into the vestibule, PO Barker remained at the outermost vestibule doorway and said, § 87(2)(b) my name is Officer Barker--" § 87(2)(b) began to loudly curse at PO Barker. At this time, two individuals – identified by the CCRB as § 87(2)(b) and § 87(2)(b) – came to the bottom of the staircase behind the vestibule and began cursing at PO Barker and telling him to leave. § 87(2)(b) moved behind these individuals. As § 87(2)(b) and § 87(2)(b) continued to curse at PO Barker, Sgt. Delman ordered PO Barker to back away. As PO Barker backed away, § 87(2)(b) asked PO Barker for his name and shield number, which he provided verbally. Sgt. Delman provided his name as well. The officers then returned to their vehicle and left the scene.

At some point – at the time of his CCRB interview, PO Barker could not recall exactly when – PO Barker spoke with Detective Franklin regarding the incident and discovered that there was in fact no I-card for § 87(2)(b). However, PO Barker noted during his interview that, since there was a UF-61 in regards to the larceny with § 87(2)(b)'s address and physical description on it, the stop would still have been justified. § 87(2)(b) never provided his name to PO Barker. PO Barker did not make further attempts to apprehend § 87(2)(b) because his family was behaving in a belligerent manner.

During his interview, PO Barker stated that, oftentimes, when attempting to apprehend a suspect for the detective squad, he will bring a photograph with him to help him differentiate between suspects and their family members. PO Barker did not have a photograph of § 87(2)(b) at the time of the incident. At the time of his interview, PO Barker was unable to provide the number of the UF-61 concerning the larceny in question and stated that he did not have documentation of this number. There was no point during the incident at which § 87(2)(b) was pushed, hit against a door frame or wall, or choked. § 87(2)(b) never went to the ground or hit his head against any object. Neither officer made any physical contact with any civilians beyond what PO Barker described above. Sgt. Delman never threatened anyone with the use of force or said anything to the effect of, "Bring him outside – let me put a cap in his ass."

Subject Officer: SGT. ERIC DELMAN

- Sgt. Delman is a § 87(2)(b)-old white male who is 5'10" tall, weighs 190 lbs and has brown hair and

brown eyes.

- On the date of the incident, Sgt. Delman worked in plainclothes as the anti-crime sergeant in an unmarked vehicle with PO Barker from 9:26 a.m. to 6:10 p.m.

Memo Book (encl. 18A-B)

At 5:00 p.m., one male was stopped at § 87(2)(b) by PO Barker because he matched the description of the perpetrator of a past robbery. This male refused to identify himself. PO Barker had been informed by Detective Franklin of the 69th PCT detective squad that the perpetrator, [partially legible first name beginning with “§ 87(2)(b)”] § 87(2)(b) had committed a robbery. At 5:08 p.m., a report was prepared in regards. The corresponding SPRINT number was S10684.

Testimony (encl. 19A-C)

Sgt. Delman was interviewed at the CCRB on September 10, 2010. § 87(2)(g)

§ 87(2)(b) Additions to and inconsistencies with PO Barker’s narrative of the incident are summarized below.

At PO Barker’s suggestion, Sgt. Delman agreed to park outside § 87(2)(b) to see if the suspect of interest to Detective Franklin could be found there. Sgt. Delman had an unobstructed view of the stop of § 87(2)(b). As § 87(2)(b) reached his doorway, PO Barker reached out and grabbed one of § 87(2)(b)’s arms. PO Barker asked § 87(2)(b) to produce identification but § 87(2)(b) stated that he would not do this. When § 87(2)(b) and § 87(2)(b) began to speak to PO Barker, Sgt. Delman told PO Barker to call Detective Franklin to make sure that the robbery suspect was still wanted by the detective squad. When PO Barker did so, he was told by Detective Franklin that an I-card for the robbery suspect had not been generated. When Sgt. Delman discovered that this was the case, he ordered PO Barker to leave the location.

Sgt. Delman denied that PO Barker forcibly pushed or hit § 87(2)(b) against a wall or door frame. He stated that § 87(2)(b)’s body never made contact with a door frame or door and that PO Barker did not make any physical contact with § 87(2)(b) beyond what Sgt. Delman described above. He denied that he ever made any statement to the effect of, “Bring him outside – let me put a cap in his ass.” During his interview, Sgt. Delman stated that the wanted individual may actually have been § 87(2)(b)’s brother – he noted that he has the name “§ 87(2)(b)” written in his memo book. However, Sgt. Delman clarified that he was unsure of this and that he never obtained § 87(2)(b)’s name because § 87(2)(b) refused to provide it.

Medical Records (encl. 20A-20PPP)

§ 87(2)(b) was admitted to § 87(2)(b) on § 87(2)(b) for head pain, dizziness, and “sleepy” feeling eyes. At the time, he reported feeling no neck pain or stiffness. His skin showed no apparent lesions. He reported experiencing pain upon palpation of the occipital area of his scalp; however, it was observed that his face was “atraumatic” and that occipital swelling was minimal. He was given CT scan of the head, which indicated obstructive non-communicating hydrocephalus. The radiology notes indicate that “there is no evidence of periventricular edema to suggest acute hydrocephalus and this is therefore likely chronic.” There was no evidence of acute intracranial hemorrhage.

§ 87(2)(b) was transferred to § 87(2)(b) on § 87(2)(b). After an MRI revealed a colloid cyst, § 87(2)(b) stated that he had “passed out” – i.e., experienced a drop attack – approximately two months prior. His pre-operative evaluation notes that this drop attack may have been related to the colloid cyst. § 87(2)(b) underwent brain surgery for removal of the cyst. During a follow-up evaluation on July 21, 2010, it was confirmed that § 87(2)(b)’s hydrocephalus had completely resolved.

Witness Officer: DETECTIVE THOMAS FRANKLIN

- *Detective Franklin is a § 87(2)(b)-old black male who is 6'2" tall, weighs 260 lbs and has black hair and brown eyes.*
- *On the date of the incident, Detective Franklin worked in plainclothes from 3:45 p.m. to 1:00 a.m. As a member of the 69th Precinct Detective Squad, he did not have a partner or a vehicle assignment.*

Memo Book (encl. 19D-F)

Detective Franklin did not have any memo book entries regarding this incident.

Testimony

Detective Franklin was interviewed at the CCRB on March 2, 2011. Although Detective Franklin was not present for the incident and did not recall interacting with either Sgt. Delman or PO Barker on the date of the incident, he recalled that, several months prior to the incident date (he was unable to recall exactly when), an unidentified minor and his mother filed a report that the minor had been robbed of his mobile phone on the basketball court of a schoolyard located on Remsen Avenue within the confines of the 69th Precinct. On an unknown date, the robbery victim showed Detective Franklin a MySpace photograph of the suspected robbery perpetrator, who Detective Franklin observed was a black male with a dark complexion and a wide nose who was approximately 14 or 15 years old. Detective Franklin observed that the name on the suspected perpetrator's MySpace profile was something similar to "§ 87(2)(b) § 87(2)(b)" at the time of his interview, he stated that the name § 87(2)(b) did not sound familiar to him. Although Detective Franklin did not himself generate a UF-61, he recalled becoming aware of the fact that one was generated subsequent to the date on which he examined the suspected perpetrator's MySpace photograph. He did not recall having ever become aware of the perpetrator's address.

Prior to January 16, 2010, on a date that Detective Franklin could not recall, he spoke with PO Barker regarding this robbery investigation. Detective Franklin approached PO Barker, provided the suspected perpetrator's name and expressed an interest in speaking with this individual. Although Detective Franklin could not recall the specific phrasing of this statement, he believed that he simply said that he would "like to" speak with the suspected perpetrator. During his interview, Detective Franklin made a point of clarifying that he did not intend to be asking PO Barker to detain the suspected perpetrator against his will, as it was Detective Franklin's understanding at the time that doing so would have been improper under the circumstances. Detective Franklin told PO Barker that the suspected perpetrator was a young black male. He did not specify the suspected perpetrator's age or provide any further description of the suspected perpetrator. He indicated that the suspected perpetrator might be found on the basketball court where the robbery had occurred or at a location on a street in the East 80s, the specifics of which Detective Franklin could not recall. He did not recall providing PO Barker with the suspected perpetrator's address. During his interview, when Detective Franklin was shown the CCRB photograph of § 87(2)(b) he stated that the person in the photo appeared to be much older than he recalled the suspected perpetrator being and that he was certain that the person in the photo was not the suspected perpetrator. No I-Card was generated in regards to this complaint because the suspected perpetrator was a juvenile.

NYPD Documents

69th PCT Tour 2 Roll Call (encl. 23A-G)

On the date of the incident, PO Barker was assigned to anti-crime and partnered with Sgt. Delman, who was the anti-crime supervisor.

Log of SPRINT S10684 and Corresponding Communications CD (encl. 21A-22A)

Taken together, the SPRINT log and corresponding Communications CD for this incident indicate that, at 5:11 p.m., an anti-crime officer reported a male stopped outside § 87(2)(b) ■

Street. One minute later, the job was closed as a 10-93 Q (other report prepared).

DD5S and UF-61 # 2§ 87(2)(b) (encl. 23H-Z)

The DD5s for Detective Franklin's investigation into the robbery in question indicate that, by September 15, 2009, Detective Franklin had identified the suspected robbery perpetrator as § 87(2)(b) a § 87(2)(b)-old black male who is 5'8" tall and has a medium build, a dark complexion, close cut hair and a large nose. Detective Franklin ascertained that this suspect lives at § 87(2)(b) Street in Brooklyn. On December 9, 2009, the robbery victim viewed a photograph of § 87(2)(b) and positively identified him as the perpetrator. The UF-61 does not provide any additional identifying information for the suspected perpetrator.

Status of Civil Proceedings (encl. 25A-B)

- § 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b), claiming violation of his property and liberty interests, violation of his right to equal protection, excessive force, assault and battery, negligence, infliction of emotional distress, abuse of process, negligent hiring, screening and supervision, physical injuries, psychological pain and suffering, loss of income, legal expenses, and embarrassment and humiliation. He is seeking an unspecified amount of monetary redress.

Civilian Criminal Histories (encl. 24A-B)

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]

Civilian CCRB Histories (encl. 5A-6A)

- In addition to this complaint, § 87(2)(b) is listed as either a victim or complainant in the following CCRB complaints:
 - § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]

Subject Officer CCRB Histories (encl. 3A-4C)

- PO David Barker has been a member of the service for 10 years and there are seven substantiated CCRB allegations against him, all of which are from case 200611831. In this case, it was found that PO Barker improperly stopped and questioned an individual, searched an individual's vehicle, damaged an individual's property, refused to provide his name and shield number, used profane language and frisked/searched an individual. The Department Advocate's Office declined to prosecute the alleged stop and question. PO Barker was found guilty of refusing to provide his name and shield and not guilty for all other allegations.
- Sgt. Eric Delman has been a member of the service for 12 years and there are no substantiated CCRB allegations against him.

Conclusion

Identification of Subject Officers

- § 87(2)(b) testified that only two officers, a white male and a black male, were involved in the incident, and that the black male officer identified himself as “Barker.” He alleged that the black officer grabbed him, slammed him against a door and a wall and choked him and that the white officer threatened to shoot him. PO Barker, a black male, and Sgt. Delman, a white male, both confirmed that they were the only two officers present during the incident. As PO Barker’s supervisor, it was Sgt. Delman’s responsibility to ensure that the stop of § 87(2)(b) was consistent with departmental guidelines. § 87(2)(g)

Investigative Findings and Recommendations

Allegation A: Sgt. Eric Delman supervised the stop of § 87(2)(b)

§ 87(2)(b) alleged that PO Barker stopped him as he was entering the vestibule of § 87(2)(b) in Brooklyn. Both PO Barker and Sgt. Delman confirmed that this stop occurred, and PO Barker prepared a stop and frisk report in regards. According to the testimonies of PO Barker and Sgt. Delman, § 87(2)(b) was stopped solely for the following two reasons: he fit the general physical description – black male, slim to medium build – of a suspect who was wanted in connection with a prior grand larceny; he was attempting to enter § 87(2)(b) which was believed to be the address of the suspected perpetrator. This information was provided to PO Barker by Detective Franklin of the 69th Precinct Detective Squad. Although the UF-250 prepared by PO Barker indicates that § 87(2)(b) provided “evasive, false or inconsistent responses” to officers’ questions, PO Barker’s testimony indicates that § 87(2)(b) was stopped before he had an opportunity to speak. Detective Franklin testified that, although he told PO Barker that the suspected perpetrator was a young black male, he did not provide PO Barker with any further information about the suspected perpetrator’s physical appearance. He further testified that he did not ask PO Barker to detain the suspected perpetrator against his will, as it was his understanding that doing so would have been improper under the circumstances. Additional details of the description contained in police documents, a series of DD5s (encl. 23H-X), point to a person other than § 87(2)(b). For example, the DD5s describe the perpetrator as 5 feet, 8 inches tall and § 87(2)(b) old whereas § 87(2)(b) stands 6 feet, 1 inch tall and was § 87(2)(b) old at the time of the incident.

Section 140.50, Subsection 1, of NYS Criminal Procedure Law (encl. 2A) states that an officer may stop a person only “when he reasonably suspects that such a person is committing, has committed, or is about to commit either (a) a felony or (b) a misdemeanor defined in the penal law.” Vague or general descriptions that are applicable to many people cannot provide reasonable suspicion. People v. Thomas, 752 N.Y.S.2d 70 (2002) (encl. 2B-C). § 87(2)(g)

§ 87(2)(g)

Allegation B: PO David Barker used physical force against § 87(2)(b)

Allegation C: PO David Barker used a chokehold against § 87(2)(b)

§ 87(2)(b) alleged that PO Barker grabbed him from behind, slammed his forehead into

an iron door, choked him, picked him up by his throat and repeatedly pushed him against a vestibule wall, causing the back of his head to bang against it. Although both PO Barker and Sgt. Delman acknowledged that PO Barker made light contact with § 87(2)(b)'s arm while effecting his stop, both officers emphatically and unequivocally denied all of the above allegations and testified that no further physical contact was made with § 87(2)(b). Both officers denied that any part of § 87(2)(b)'s body collided with any object during the incident.

§ 87(2)(b)'s medical records § 87(2)(g) indicate that the neurological problems he experienced subsequent to the incident were in fact the result of a chronic, as opposed to acute, medical condition caused by the presence of a colloid cyst. His pre-operative evaluation notes that this cyst may also have been responsible for neurological problems that he experienced approximately two months prior to the incident. § 87(2)(g)

Furthermore, despite § 87(2)(b)'s claim that he was slammed forehead first into an iron door, his physical examination revealed that his face was "atraumatic," and radiological exams revealed no evidence of acute intracranial hemorrhage. Despite his claim that he informed medical personnel that his neck was "killing" him, medical notes indicate that, at the approximate time of his hospital admission, he reported feeling no neck pain or stiffness. Additionally, UF-61 # § 87(2)(b) indicates that, less than three months prior to the incident, § 87(2)(b) was struck in the head and face with a shovel by an unapprehended perpetrator and sustained cuts on his head and face as a result. § 87(2)(a) Gen.Mun. §50-H(3)

As noted above, neither § 87(2)(b) nor § 87(2)(b) cooperated with the investigation's attempts to obtain statements from them. § 87(2)(g)

Allegation D: Sgt. Eric Delman threatened § 87(2)(b) with the use of force.

§ 87(2)(b) alleged that, after PO Barker choked him, Sgt. Delman said to PO Barker, "Bring him outside! Let me put a cap in his ass!" Both Sgt. Delman and PO Barker denied that any such statement was made. § 87(2)(g)

Team: _____

Investigator: _____ :
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date